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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DEC 22 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matters of )  
Application of )  
CAPITOL RADIOTELEPHONE, INC. )  
d/b/a CAPITOL PAGING )  
For a Private Carrier Paging )  
Facility on 152.480 MHz in )  
Huntington/Charleston, WV )  
Imposition of Forfeiture re )  
CAPITOL RADIOTELEPHONE, INC. )  
d/b/a CAPITOL PAGING )  
Former Licensee of Station )  
WNSX646 in the PLMRS )  
Revocation of Licenses of )  
CAPITOL RADIO TELEPHONE, INC. )  
d/b/a CAPITOL PAGING )  
Licensee of Stations WNDA400 )  
and WNWW636 in the PLMRS )  
Revocation of Licenses of )  
CAPITOL RADIOTELEPHONE COMPA- )  
NY, INC. d/b/a CAPITOL PAGING )  
Licensee of Stations KWU373, )  
KUS223, KQD614 and KWU204 in )  
the PMRS )

PR Docket No. 93-231

To: Administrative Law Judge Joseph Chachkin

OPPOSITION TO PRIVATE RADIO  
BUREAU'S MOTION TO ENLARGE THE ISSUES

CAPITOL RADIOTELEPHONE COMPANY, INC. (a/k/a Capitol Radiotelephone, Inc. or Capitol Radio Telephone, Inc.) d/b/a CAPITOL PAGING ("Capitol"), by its attorneys, hereby opposes the Private Radio Bureau's Motion to Enlarge the Issues (the

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"Motion to Enlarge") filed under date of December 9, 1993.<sup>1</sup>

In opposition thereto, Capitol respectfully shows:

The Private Radio Bureau has filed a motion to enlarge the issues in this hearing proceeding to include (a) whether Capitol and RAM Technologies, Inc. ("RAM") have abused the Commission's processes, and (b) whether, in light of such conduct, they possess the requisite character qualifications to remain Commission licensees. The sole basis for the motion is the fact that Capitol and RAM entered into a settlement agreement as of November 30, 1993, a copy of which is attached to the Bureau's motion.

Under the agreement, RAM and Capitol indefinitely suspended the deadlines for responding to certain discovery requests that they had theretofore served upon the other, and agreed to withdraw and dismiss those requests. RAM also agreed, to the extent possible, to not participate further in the case, and to seek to formally withdraw as a party; and Capitol also agreed to dismiss its application for a private carrier paging station on 152.48 MHz, and to not operate a station on that frequency in the states of West Virginia, Kentucky and Ohio for a minimum of eight years. The sole consideration for the agreement was the mutual undertakings of the parties as recited in the agreement.

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<sup>1</sup> The Motion to Enlarge was served by mail. This opposition is thus timely filed pursuant to §§1.294(c)(1) and 1.4(h) of the rules.

In seeking to enlarge the issues herein, the Bureau does not trouble to define in any respect what it means by the "abuse of the Commission's processes" it accuses RAM and Capitol of having committed. Nor does the Bureau trouble to cite any authority whatsoever to support its claim that the settlement agreement somehow is improper.<sup>2</sup>

Instead, the Bureau first makes the preposterous claim that the settlement agreement "is nothing more than an attempt to contravene the Presiding Judge's ruling rejecting a settlement agreement in the above-captioned proceeding". Motion to Enlarge at p. 4. However, the settlement agreement referred to by the Bureau, inter alia, would have terminated the proceeding without a hearing; it required Capitol to admit to violations of §§90.405(a)(3) and 90.425 (b)(2) of the rules; it required Capitol to pay a forfeiture of \$10,000; and it required Capitol to make a voluntary contribution to the United States Treasury in the amount of \$17,500. The settlement agreement between RAM and Capitol has nothing whatsoever to do with any of those matters. Thus, the Bureau's characterization of the RAM/Capitol agreement in the first place is palpably incorrect.

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<sup>2</sup> Directly contrary to the Bureau's position, of course, is the Commission's general policy favoring private resolution of disputes. See, e.g., §1.18 of the rules ("Commission has adopted an initial policy statement that supports and encourages the use of alternative dispute resolution procedures in its administrative proceedings"); §22.29(b) of the rules ("Parties to contested proceedings are encouraged to settle their disputes among themselves").

Moreover, the Presiding Judge rejected the settlement referred to by the Bureau because he believed it contravened §1.93 of the rules.<sup>3</sup> Specifically, the Presiding Judge ruled that "consent procedures can not be used in this case since the designated misrepresentation/lack of candor issue, which remains unresolved, directly relates to Capitol's basic character qualifications." Id. Again, nothing whatsoever in the agreement between RAM and Capitol purports to address in any way any matter that could be thought to relate to the issue of Capitol's basic qualifications to be a Commission licensee.

Next, the Bureau complains that RAM and Capitol "are attempting, by private agreement, to regulate the course of the proceeding". Motion to Enlarge at p. 4. Again the charge is demonstrably false. The agreement clearly acknowledges that leave of the Presiding Judge must be obtained for certain of the actions contemplated, and it requires only that such leave be sought. Moreover, the agreement expressly acknowledges that RAM remains subject to its legal obligations as a Commission licensee and to the requirements of legal process. In short, the settlement agreement leaves entirely intact all mechanisms by which this or any other hearing proceeding is "regulated," and the

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<sup>3</sup> Memorandum Opinion and Order, PR Docket No. 93.231, FCC 93M-722, issued November 19, 1993 and released November 22, 1993, at p. 4 & ¶4.

Bureau's bare claim to the contrary cannot survive even minimal scrutiny.

The Bureau also complains that the agreement between RAM and Capitol "ha[s] the serious potential to interfere with the level of inquiry possible in this proceeding". Not only is this claim palpably false; it is also shocking in its implications. What this implies is that RAM is essentially the keeper of the government's entire case against Capitol, and that if RAM does not actively prosecute the case the government has little left to offer. If true, of course, it would be a damning admission that the Bureau's investigation of the facts prior to issuance of the Hearing Designation Order was superficial and slipshod.

Moreover, the Bureau has the burden of proof in this case, not RAM; and it was the Commission, not RAM, that designated this matter for hearing. In response to Capitol's Freedom of Information Act requests and its interrogatories herein, the Bureau has already provided to Capitol the information it obtained from RAM, upon which it based the various claims in the Hearing Designation Order. Therefore, in light of the processes available to the Bureau as a party in an adjudicatory proceeding, it is simply untrue and incredible for the Bureau to claim that RAM's active prosecution of the case, vel non, has a material bearing on the Bureau's ability to put on its case.

In point of fact, the Bureau's motion really reduces to the complaint that it will have to do more work if RAM does not put on the Bureau's case for it. While that may be disappointing to the Bureau, it certainly does not suggest that there is anything sinister about the settlement agreement between RAM and Capitol.

The settlement agreement between RAM and Capitol does nothing more than attempt to streamline this case for trial and to minimize the expense to each of this litigation. Both objectives are entirely legitimate ones which RAM and Capitol have every right to pursue. On the other hand, §1.229(d) of the rules requires that the Bureau's Motion to Enlarge "shall contain specific allegations of fact sufficient to support the action requested". The Bureau's motion plainly does not do so, and accordingly it should be denied.

WHEREFORE, the Private Radio Bureau's Motion to Enlarge the Issues should be rejected as without merit.

Respectfully submitted,

CAPITOL RADIOTELEPHONE COMPANY,  
INC. d/b/a CAPITOL PAGING

By:

  
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One of Its Attorneys

December 22, 1993

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of December, 1993, served the foregoing Opposition to Private Radio Bureau's Motion to Enlarge the Issues upon the Federal Communications Commission by delivering a true copy thereof to Administrative Law Judge Joseph Chachkin, 2000 L Street, N.W., Room 226, Washington, D.C. 20554, to Carol Fox Foelak, Esquire, Private Radio Bureau, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554, and to Y. Paulette Laden, Esquire, Mass Media Bureau, 2025 M Street, N.W., Room 7212, Washington, D.C. 20554, and upon RAM Technologies, Inc. by mailing a true copy thereof to its attorney, Frederick M. Joyce, Esquire, Joyce & Jacobs, 2300 M Street, N.W., Suite 130, Washington, D.C. 20037.

  
Kenneth E. Hardman